

ORIGINAL

AO 108 (Rev. 06/09) Application for a Warrant to Seize Property Subject to Forfeiture

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

United States Courts
Southern District of Texas
FILED

APR 23 2013

David J. Bradley, Clerk of Court

In the Matter of the Seizure of
(Briefly describe the property to be seized)The Subject Domain Name:
SAMEWOOD.COM

Case No.

H 13-439 M

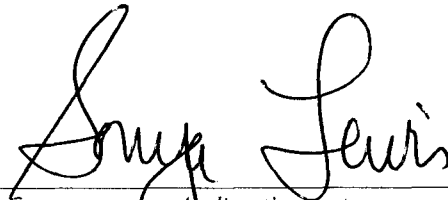
APPLICATION FOR A WARRANT
TO SEIZE PROPERTY SUBJECT TO FORFEITURE

I, a federal law enforcement officer or attorney for the government, request a seizure warrant and state under penalty of perjury that I have reason to believe that the following property in the Eastern District of Virginia is subject to forfeiture to the United States of America under 18 U.S.C. §

2323(a)(1)(B) (describe the property):The Subject Domain Name:
SAMEWOOD.COM

The application is based on these facts:

See attached Affidavit

☒ Continued on the attached sheet.


Applicant's signature

Sonya Lewis, Special Agent

Printed name and title

Sworn to before me and signed in my presence.

Date: 4/23/13


Judge's signature

City and state: Houston, TX

George C. Hanks, Jr., U. S. Magistrate Judge

Printed name and title

AFFIDAVIT IN SUPPORT OF A SEIZURE WARRANT

I, Sonya Lewis, being duly sworn, depose and state as follows:

I. ITEMS TO BE SEIZED

1. This affidavit is in support of a seizure warrant for the following item:

(a) the domain name samewood.com

II. AFFIANT'S EXPERIENCE

2. I am a Special Agent (SA) with Homeland Security Investigations (HSI) within the Department of Homeland Security (DHS). I have been so employed for the past nine (9) years and prior to working with HSI, I was employed by the United States Customs Service as a SA for approximately two (2) years. I have received training and experience in the investigation of Intellectual Property Rights (IPR) violations over the past four (4) years. I have participated in a number of IPR investigations that involved, but were not limited to, the purchase of evidence while working in a casual undercover capacity resulting in the furtherance of the investigations.

3. The information contained in this affidavit is based on my personal knowledge and observations accumulated during the course of this investigation, on information conveyed to me by other law enforcement personnel, and on my review of documents and interview reports. The affidavit is submitted for the limited purpose of establishing probable cause in support of this application for seizure warrant. Thus, it does not contain every fact known by me or by the United States.

III. PURPOSE OF APPLICATION AND LEGAL DISCUSSION

4. HSI Special Agents are investigating the importation, sale, and distribution of counterfeit consumer goods through websites and using email addresses, specifically the domain

name samewood.com. (“Subject Domain Name samewood.com”)

5. There is probable cause to believe that Subject Domain Name samewood.com is subject to civil seizure and forfeiture pursuant to Title 18, United States Code, Section 2323(a)(1)(B) as property used, or intended to be used, in any manner or part to commit or facilitate the commission of trafficking in counterfeit goods in violation of Title 18, United States Code, Section 2320.

IV. DEFINITIONS AND TECHNICAL TERMS RELATED TO COMPUTERS AND THE INTERNET

6. Based on my training and experience and information learned from others, I am familiar with the following terms:

a. Internet Protocol Address: An Internet Protocol Address (IP address) is a unique numeric address used by computers on the Internet. An IP address is a series of four numbers, each in the range 0-255, separated by periods (e.g., 121.56.97.178). Every computer attached to the Internet must be assigned an IP address so that Internet traffic sent from and directed to that computer may be directed properly from its source to its destination. An IP address acts much like a home or business street address -- it enables computers connected to the Internet to properly route traffic to each other. The assignment of IP addresses to computers connected to the Internet is controlled by Internet Service Providers (ISP).

b. Domain Name: A domain name is a simple, easy-to-remember way for humans to identify computers on the Internet, using a series of characters (e.g., letters, numbers, or other characters) that correspond with a particular IP address. For example, “usdoj.gov” and “cnn.com” are domain names.

c. Domain Name System: The domain name system (“DNS”) is, among other things, a hierarchical convention for domain names. Domain names are composed of one or more parts, or “labels,” that are delimited by periods (e.g., www.example.com). The hierarchy of domains descends from right to left; each label to the left specifies a subdivision, or subdomain, of the domain on the right. The right-most label conveys the “top-level” domain. For example, the domain name “www.example.com” means that the computer assigned that name is in the “.com” top-level domain, the “example” second-level domain, and is the web server.

d. Domain Name Servers: DNS servers are computers connected to the Internet that convert, or resolve, domain names into Internet Protocol (“IP”) addresses. For each top-level domain (such as “.com”), there is a single company, called a “registry,” that determines which second-level domain resolves to which IP address. For example, the registry for the “.com” and “.net” top-level domains is VeriSign, Inc. (“VeriSign”). VeriSign is headquartered at 12061 Bluemont Way, Reston, VA 20190.

e. Registrar: Provides direct services to domain name registrants. The registrar database contains customer information in addition to the DNS information contained in the registry database. Registrars process name registrations for entry in to the centralized registry database and ultimate propagation over the Internet. There are multiple registrars providing registration services through VeriSign.

f. Registrant: The individual or organization registers a specific domain name with a registrar. This individual or organization holds the right to use that specific domain name for a specified period of time, provided certain conditions are met and the registration fees are

paid. This person or organization is the 'legal entity' bound by the terms of the Domain Name Registration Agreement with the registrar. The VeriSign registry provides direct services to registrars only, not Internet end-users. The registry database contains only domain name service (DNS) information (domain name, name server names, and name server Internet Protocol numbers) along with the name of the registrar that registered the name and basic transaction data. It does not contain any domain name registrant or contact information. Registrars provide direct services to registrants.

V. PROBABLE CAUSE FOR SEIZURE AND FORFEITURE

7. This application for a seizure warrant arises from an investigation into websites that are being used in the connection with the illegal trafficking of counterfeit goods and the distribution of infringing copies of trademark protected goods, such as cycling merchandise.

8. All of the products purchased by the HSI SA's from Subject Domain Name samewood.com as described below, are products that purport to bear marks that are registered with the United States Patent and Trademark Office ("USPTO"). According to the USPTO, a trademark is a brand name and includes any word, name, symbol, device, or any combination, used or intended to be used, in commerce to identify and distinguish the goods of one manufacturer or seller from goods manufactured or sold by others and indicate the source of the goods and copyrighted materials. Under Title 18, United States Code, Section 2320(f)(1), a "counterfeit mark" means: a spurious mark that is used in connection with trafficking in any goods that is identical with, or substantially indistinguishable from, a mark registered on the principal register in the USPTO; that is applied to or used in connection with the goods for which the mark is registered with the USPTO; and the use of which is likely to cause confusion, to

cause mistake, or to deceive.

9. In July 2011, HSI Special Agents received a referral from the National Intellectual Property Rights Coordination Center concerning a large number of websites that were alleged to be facilitating the sale of suspected counterfeit cycling merchandise from China. HSI Houston initiated an investigation in July 2011 regarding trademark holder Specialized Bicycles.

A. Counterfeit Products Sold on samewood.com

10. The investigation has identified samewood.com as one of the websites facilitating the sale of counterfeit goods from China. Samewood.com offers products for sale such as cycling merchandise (i.e. cycling jerseys, cycling pants, cycling shorts, cycling arm warmers, cycling gloves, etc.). Trademark holder Specialized Bicycles' products are being counterfeited on samewood.com, and, on or about October 22, 2012, and April 12, 2013, the SA received an affidavit from Specialized Bicycles affirming that samewood.com does not represent authorized Specialized Bicycles dealers in their worldwide network.

11. HSI Houston conducted an under-cover operation to confirm that samewood.com was selling counterfeit goods.

B. First Under-Cover Purchase of Counterfeit Cycling Merchandise from samewood.com

12. On or about September 6, 2012, a HSI SA accessed samewood.com website and followed the directions to place an order for a 2012 Specialized Red/White Cycling Set Jersey and Bib Shorts. The SA added this item to the shopping cart and proceeded to checkout. The web page displayed the shopping cart that contained the item the SA had selected and the corresponding price of \$59.99 USD. The SA continued through the checkout process by

inputting all of the billing and shipping details, including an email address that had been established earlier. The SA made a payment of \$59.99 USD, and the SA has learned the Manufactured Suggested Retail Price (MSRP) for the 2012 Specialized Red/White Cycling Set Jersey and Bib Shorts is approximately \$200.00 USD.

13. On or about October 3, 2012, the SA received the 2012 Specialized Red/White Cycling Set Jersey and Bib Shorts at an undercover mailing site in the Humble, Texas, area via the Worldwide Express Mail Service (EMS). (EMS is a known Chinese delivery service used by Chinese companies and individuals to ship legitimate and illegitimate merchandise to the United States.) EMS labeling shows the packages arriving direct from China, and it is known that the packages were transferred to the United States Postal Service for an express mail delivery to their final destination.

14. On or about October 22, 2012, and April 12, 2013, the SA received signed affidavits from a representative of Specialized Bicycles who viewed digital photos of the purchased item and reviewed the website samewood.com. The representative of Specialized Bicycles determined that the purchased 2012 Specialized Red/White Cycling Set Jersey and Bib Shorts is counterfeit because: Specialized Bicycles does not use the hangtags attached to the merchandise, and Specialized Bicycles graphic is different. The representative further stated that samewood.com is not an authorized Specialized Bicycles dealer in their worldwide network.

C. Second Under-Cover Purchase of Counterfeit Cycling Merchandise from samewood.com

15. On or about September 7, 2012, a HSI SA accessed samewood.com website and followed the directions to place an order for a 2012 Specialized UCI Champion Cycling Sleeveless Jersey and Shorts Kit. The SA added this item to the shopping cart and proceeded to

checkout. The web page displayed the shopping cart that contained the item the SA had selected and the corresponding price of \$49.99 USD. The SA continued through the checkout process by inputting all of the billing and shipping details, including an email address that had been established earlier. The SA made a payment of \$49.99 USD, and the SA has learned the Manufactured Suggested Retail Price (MSRP) for the 2012 Specialized UCI Champion Cycling Sleeveless Jersey and Shorts Kit is approximately \$200.00 USD.

16. On or about November 8, 2012, the SA received the 2012 Specialized UCI Champion Cycling Sleeveless Jersey and Shorts Kit at an undercover mailing site in the Humble, Texas, area via EMS. EMS labeling shows the packages arriving direct from China, and it is known that the packages were transferred to the United States Postal Service for an express mail delivery to their final destination.

17. On or about October 22, 2012, and April 12, 2013, the SA received signed affidavits from a representative of Specialized Bicycles who viewed digital photos of the purchased item and reviewed the website samewood.com website. The representative of Specialized Bicycles determined that the purchased 2012 Specialized UCI Champion Cycling Sleeveless Jersey and Shorts Kit is counterfeit because Specialized Bicycles only made this for one person, the 2012 World Champion and Specialized Bicycles team member Jaroslav Kuldavy. There was never a consumer version made of this jersey, and Specialized Bicycles does not use the hangtags attached to the merchandise. The representative further stated that samewood.com is not an authorized Specialized Bicycles dealer in their worldwide network.

D. Third Under-Cover Purchase of Counterfeit Cycling Merchandise from samewood.com

18. On or about September 7, 2012, a HSI SA accessed samewood.com website and

followed the directions to place an order for a 2010 Specialized Black Cycling Jersey and Bib Shorts. The SA added this item to the shopping cart and proceeded to checkout. The web page displayed the shopping cart that contained the item the SA had selected and the corresponding price of \$59.99 USD. The SA continued through the checkout process by inputting all of the billing and shipping details, including an email address that had been established earlier. The SA made a payment of \$59.99 USD, and the SA has learned the Manufactured Suggested Retail Price (MSRP) for the 2010 Specialized Black Cycling Jersey and Bib Shorts is approximately \$200.00 USD.

19. On or about October 17, 2012, the SA received the 2010 Specialized Black Cycling Jersey and Bib Shorts at an undercover mailing site in the Humble, Texas, area via EMS. EMS labeling shows the packages arriving direct from China, and it is known that the packages were transferred to the United States Postal Service for an express mail delivery to their final destination.

20. On or about October 22, 2012, and April 12, 2013, the SA received signed affidavits from a representative of Specialized Bicycles who viewed digital photos of the purchased item and reviewed the website samewood.com. The representative of Specialized Bicycles determined that the purchased 2010 Specialized Black Cycling Jersey and Bib Shorts is counterfeit because Specialized Bicycles does not use the hangtags attached to the merchandise. The representative further stated that samewood.com is not an authorized Specialized Bicycles dealer in their worldwide network.

VI. THE SAMEWOOD.COM DOMAIN

21. A search of publicly available WHOIS domain name registration records revealed

that the samewood.com domain was registered on or about March 8, 2011, through the registrar GO DADDY.COM, LLC which has its headquarters at 14455 N. Hayden Rd., Suite 226, Scottsdale, AZ 85260. The publicly available WHOIS database lists the registrant of the samewood.com domain as Qiao Yang located at Rainbow City, Dongxin St., Honghuagang, Zunyi, Guizhou 563000 China. Publicly available WHOIS records also revealed that the samewood.com domain site is hosted on a computer assigned IP address 93.174.91.210.

VII. SEIZURE PROCEDURE

22. As detailed in Attachment A, upon execution of the seizure warrant, the registry for the “.com” top-level domain, VeriSign, Inc., headquartered at 12061 Bluemont Way, Reston, VA 20190 (“VeriSign”), shall be directed to restrain and lock Subject Domain Name samewood.com. This will take place pending the transfer of all right, title, and interest in Subject Domain Name samewood.com to the United States upon completion of forfeiture proceedings, to ensure that changes to Subject Domain Name samewood.com cannot be made absent court order or, if forfeited to the United States, without prior consultation with HSI.

23. In addition, upon seizure of Subject Domain Name samewood.com by HSI, the Subject Registry will be directed to point Subject Domain Name samewood.com to a particular IP address which will display a web page notifying users, including the registrants, of seizure of Subject Domain Name samewood.com.

24. Upon seizure of Subject Domain Name samewood.com, the Subject Registry will take all steps necessary to restrain and lock the domain at the registry level to ensure that changes to Subject Domain Name samewood.com cannot be made absent a court order or, if forfeited to the United States government, without prior consultation with the United States

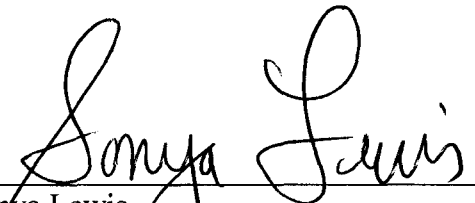
Immigration and Customs Enforcement. All name server fields will be changed to reflect "ns1.samewood.com" and "ns2.samewood.com".

25. Upon seizure of Subject Domain Name samewood.com Subject Registrar based in the United States shall contact the registrant of Subject Domain Name samewood.com and provide notice of the seizure along with the contact information for HSI.

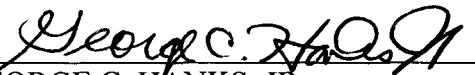
26. Upon completion of forfeiture proceedings, all Domain Name Records for Subject Domain Name samewood.com will be changed to reflect the transfer of ownership to the United States.

VIII. CONCLUSION

27. Based on the foregoing, I respectfully submit that there is probable cause to believe that Subject Domain Name samewood.com is subject to seizure and forfeiture because Subject Domain Name samewood.com is being used, or intended to be used, in any manner or part to commit or facilitate the commission of trafficking in counterfeit goods in violation of Title 18, United States Code, Section 2320.


Sonya Lewis
Special Agent
Homeland Security Investigations

Subscribed to and sworn before me on this 23rd day of April, 2013, and I find probable cause.


GEORGE C. HANKS, JR.
UNITED STATES MAGISTRATE JUDGE

ATTACHMENT A

I. Seizure Procedure

A. The seizure warrant will be presented in person or transmitted via facsimile or email to personnel of the domain name registry listed in Section II ("Subject Registry") and the domain name registrar listed in Section III ("Subject Registrar") who will be directed, for the domain name listed in Section IV ("Subject Domain Name") for which it serves as the top-level domain registry, to make any changes necessary to restrain and lock the domain name pending transfer of all rights, title, and interest in the Subject Domain Name to the United States upon completion of forfeiture proceedings.

A. Upon seizure of the Subject Domain Name, the Subject Registry shall point the Subject Domain Name to IP address 74.81.170.109 (for "ns1.samewood.com" name server fields) and 74.81.170.108 (for "ns2.samewood.com" name server fields), at which the Government will display a web page with the following notice:

This domain name has been seized by ICE - Homeland Security Investigations pursuant to a seizure warrant issued by a United States District Court under the authority of 18 U.S.C. §§ 981 and 2323.

Willful copyright infringement is a federal crime that carries penalties for first time offenders of up to five years in federal prison, a \$250,000 fine, forfeiture and restitution (Title 17, United States Code, Section 506, Title 18, United States Code, Section 2319). Intentionally and knowingly trafficking in counterfeit goods is a federal crime that carries penalties for first time offenders of up to ten years in federal prison, a \$2,000,000 fine, forfeiture and restitution (18 U.S.C. § 2320).

B. Upon seizure of the Subject Domain Name, the Subject Registry shall take all steps necessary to restrain and lock the domain at the registry level to ensure that changes to the subject domain name cannot be made absent a court order or, if forfeited to the United States government, without prior consultation with United States Immigration and Customs Enforcement. All name server fields will be changed to reflect "ns1.samewood.com" and "ns2.samewood.com" i.e.:

- a. "ns1.samewood.com" and/or "ns2.samewood.com"

C. Upon seizure of the Subject Domain Name, the Subject Registrar based in the United States shall contact the registrant of the Subject Domain Name and provide them notice of the seizure along with the following contact information:

- (a) Name: Homeland Security Investigations
National Intellectual Property Rights Coordination
Center
- (b) Address: 2451 Crystal Drive, Suite 200
Arlington, VA 20598-5105
- Country: USA
- (c) Telephone: 1-866-IPR-2060 (477-2060)
- (d) Email: IPRCenter@dhs.gov
- (e) Fax: 703-603-3872

II. Subject Registry

VeriSign, Inc.
12061 Bluemont Way
Reston, VA 20190

III. Subject Registrar

GO DADDY.COM, LLC
14455 N. Hayden Rd., Suite 226
Scottsdale, AZ 85260

IV. Subject Domain Name

SAMEWOOD.COM